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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,585	01/15/2004	Gary Wayne Bagnall	37370-32	7985

24318 7590 01/30/2006

Mitchell, Silberberg & Knupp, LLP
11377 West Olympic Boulevard
Los Angeles, CA 90064

EXAMINER

ROWAN, KURT C

ART UNIT PAPER NUMBER

3643

DATE MAILED: 01/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/759,585	Applicant(s) BAGNALL ET AL.	
	Examiner Kurt Rowan	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 18-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 18-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. In view of the appeal filed on Oct. 20, 2005, PROSECUTION IS HEREBY REOPENED. See the Office Action as set forth below.

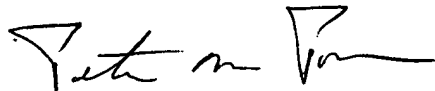
To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

Peter Poon.



Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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2. Claims 2, 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Beaton.

The patent to Beaton shows an insect trap having an upper section 21, having side walls, a top cover 30 and plural openings 22 in the side walls. Beaton shows an enclosed lower section 24 and a funnel 23 between the upper section and the lower section wherein the funnel has a wide opening adjacent the upper section and a smaller opening within the lower section. Beaton shows a light source 28. Beaton shows a hanging means (not labeled) in Fig. 1. Beaton shows a clear plastic funnel which would be optically transmissive. In reference to claim 2, inherently, the inner surface of the side walls is somewhat reflective in that part of the light incident on the surface is reflected and the rest of the light is transmitted. For example, on a water surface, clearly part of the light is reflected and part of the light is transmitted. The amount of each depends on the surface. So even with a transparent surface as disclosed by Beaton, some of the light will be reflected. In reference to claim 13, Beaton shows a cover 27 that attaches to the enclosed lower section when the enclosed lower section is removed from the upper section. Beaton shows a clear plastic lower section that would inherently be optically transmissive.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3, 7, 10, 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beaton.

The patent to Beaton shows an insect trap as discussed above. In reference to claim 3, the sleeve 21 of Beaton is clear to draw insects into the trap, but it would have been obvious to employ a white inner surface of the sleeve since the insects are attracted to light colors. In reference to claim 7, Beaton does not disclose using a ultraviolet light source, but it would have been obvious to employ an old and well known ultraviolet light source for the known insect attracting properties. In reference to claim 20, Beaton does not disclose that the openings cover about 30-40% of the total area that would be provided if the side walls were completely closed. Beaton appears to show a smaller area enclosed by the openings noting Fig. 2. However, the amount of area enclosed by the openings is a matter of design choice to be determined through routine experimentation since no stated problem is solved.

5. Claims 1, 4, 5, 6, 8, 9, 11, 12, 14-16, 18-19, are rejected under 35 U.S.C. 103(a) as being unpatentable over Beaton in view of Flynn.

6. The patents to Beaton and Flynn show insects traps. Beaton has been discussed above and shows all of the elements in claim 1 with the exception of the removable funnel insert disposed in the funnel to restrict the size of the opening. The patent to Flynn shows an insect trap having a funnel 32 and a funnel insert 30 as shown in Fig. 2. in reference to claim 1, it would have been obvious to provide Beaton with a funnel insert as shown by Flynn to restrict the size of the opening to preclude the escape of flies or other insects from the trap. In reference to claim 19, Beaton does not

disclose the angle of the funnel which appears to be about 60 degrees from the horizontal. At any rate, it would have been obvious to employ an angle of at least 45 degrees from the horizontal to ensure insects that land of the funnel are directed by gravity into the trap and since exact sizes and angles of the trap would be determined through routine experimentation absent a showing of criticality.

Response to Arguments

7. Applicant's arguments filed November 9, 2004 have been fully considered but they are not persuasive. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning in regard to claim 1, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Also, see the rejection of claim 1, above. In reference to claim 2, see the rejection of claim 2, above. As to claim 7 and the ultraviolet light recited. Applicant states that ultraviolet light sources are old and well known. Beaton does not disclose an ultraviolet light. In response to applicant's argument that there is no suggestion to combine the references or in this case provide Beaton with an ultraviolet light given that Beaton employs a fluorescent light tube 29, the examiner recognizes that obviousness can only be established by combining or

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modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to employ an ultraviolet light would be to catch more insects since those skilled in the art know that insects are attracted to the wavelengths produced by an ultraviolet light source. In reference to claim 10, applicant argues that Beaton shows a transparent trap not one that has an outer surface that is substantially entirely dark. However, it should be first pointed out that a transparent sleeve can be colored. Still, Beaton does not disclose a dark color on an outer surface of the upper section. However, it would have been obvious to provide a dark color on the outside of the upper section to provide a contrast and the dark color would contrast with the clear of the lower portion and insects would be attracted to this contrast. For the same reasons, in reference to claim 3, to prevent insects from escaping it would have been obvious to employ a white inner surface to lessen the contrast between the inner surface of the trap and the openings. In reference to claim 13, Applicant argues that cover 27 of Beaton is attached to the upper section not to the lower section. However, it would have been obvious to provide Beaton with a cover to the enclosed lower section to prevent insects from escaping from the trap, noting it is obvious to rearrange the parts of Beaton. See *In re Japikse*, 86 USPQ 70

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is (571) 272-6893. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Kurt Rowan", with a long, sweeping horizontal stroke extending to the right.

Kurt Rowan
Primary Examiner
Art Unit 3643

KR